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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,214	03/24/2004	Matthew R. Cook	10773/65	3931

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EXAMINER

ELKINS, GARY E.

ART UNIT PAPER NUMBER

3727

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,214

Applicant(s)

COOK ET AL.

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20050110.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-10, 20 and 21 in the reply filed on 27 February 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Non-elected claims 11-19 were cancelled within the response filed 27 February 2006.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "20" has been used to designate both T-shaped slots and straight slots (see figs. 3 and 4). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. Figs. 9-17 and 19 are objected to because the foldlines 21 have been omitted. If different embodiments which don't include the foldlines 21 are being shown in these drawings, then the specific description for the respective drawing within the specification should be amended to clearly indicate such. If these drawings are showing the same embodiments as the other

drawings, then the drawings should be corrected to provide consistency. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities: In the Brief Description of the Drawings, the description of figs. 10-22 as being a photograph appears to be inaccurate.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Zriny. Zriny discloses a container including a lid 100 capable of assuming a closed, partially open and fully open position as claimed. Note is made that no distinction is seen between the claimed container and that evidenced in Zriny as a result of the claimed intended use of the container as a food dispenser, i.e. the container of Zriny is considered capable of dispensing food.

7. Claims 20 and 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Billstein.

8. Claims 1, 2, 8, 10, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by either Kuehlhorn or Ring (US '833). Each of Kuehlhorn and Ring discloses a first container formed by a paperboard outer container and a second inner container formed with a cover. Each first container includes a lid formed by flaps (46, 52, 53, 32, 38; shown generally at 26, respectively). The flaps forming each lid are considered to be capable of the three intended positions set forth in the claims, i.e. the lid in each reference can assume a partially open position by either positioning some of the flaps fully open and some of the flaps closed or by opening the flaps outwardly at an angle which would only partially cover the opening. Note is made that no distinction is seen between the claimed container and that evidenced in either Kuehlhorn or Ring as a result of the claimed intended use of the container as a food dispenser, i.e. the container in either Kuehlhorn or Ring is considered capable of dispensing food.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Billstein in view of Powell. Billstein discloses all structure of the claimed container except a second container capable of being within the first container. Powell teaches the well known concept of packaging smaller containers within a larger display container (pg. 2, lines 65-70). It would have been obvious to make the container of Billstein with an inner second container as taught by Powell as a mere choice of what one wishes to package within the container. The selection of one or more smaller containers as contents for a larger container is a notoriously well known concept in this art. With respect to claim 9, note is made of the slot h3 and the tab F' which interlock in the second position of the lid.

11. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ring (US '833) in view of either Tracy or Boster. Ring discloses all structure of the claimed container except an opening within the second container cover (cls. 3, 5) or a portion of the cover that can be removed to create an opening (cl. 4). Each of Tracy and Boster teaches that it is known to make a container cover with an inner removable cap. It would have been obvious to make the cover 72 in Ring with a removable cap as taught by either Tracy or Boster to facilitate dispensing access to the contents and to prevent spilling during dispensing.

12. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ring in view of Bahler. Ring discloses all structure of the claimed container except formation of the first container from corrugated paperboard (cl. 6) or formation of the second plastic container from polyethylene. Bahler teaches that it is known to make a double walled container with the outer container formed from corrugated and the inner container from polyethylene. With respect to claim 6, it would have been obvious to form the paperboard outer container in Ring from corrugated as taught by Bahler to provide a stronger and more insulative outer container. With respect to claim 7, it would have been obvious to make the inner plastic container of Ring from polyethylene as taught by Bahler since polyethylene is a cheap, readily available, and easily moldable plastic material. Both corrugated board and polyethylene are notoriously well known to those skilled in this art as container materials.

Conclusion

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

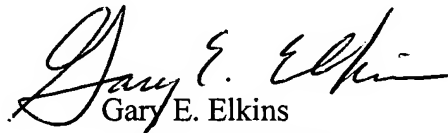
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information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.


Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
14 May 2006